

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 560 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
PRAVINCHANDRA MURARJI SAVLA

Versus

MEGHJI MURJI SHAH

-----  
Appearance:

MR SB VAKIL for Petitioner

MR YS MANKAD for Respondent No. 1

-----  
CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 27/08/97

CAVJUDGEMENT

1. The petitioner is the original plaintiff and respondent No.1A is the heir and legal representative of the original defendant. It appears that partnership business was carried on in the name and style of "Gandhidham Commercial Corporation" as per the terms and conditions stated in the partnership deed dated 1.4.80 which is produced at Mark 45/1 and the deed of variance

which was executed on the same day is marked as Mark 45/2. In the deed of variance simply shares in the profits and loss in the partnership business were varied while all other terms and conditions of partnership were maintained. Cl.19 of the partnership deed which is produced at Mark 45/1 reads as under:

"All disputes which shall arise between the parties hereto or between any of them whether during or after the determination of the partnership and whether in relation to the interpretation of these presents or to any act or commission of either party to the dispute or either of them or in relation to any other matter whatsoever touching the partnership affairs shall be referred to the arbitration of the Arbitrators to be governed under the India Arbitration Act, 1940 or any statutory modifications thereof"

2. It appears that thereafter the present petitioner-plaintiff Pravinchandra Murarji Savla retired from the partnership firm with effect from 31.3.83 as per the deed of retirement. Approximately three months thereafter i.e. on 23rd June, 1983 one agreement or consent agreement was written down by both parties and copy thereof is produced at Mark 3/1. Said agreement, dated 23rd June, 1983 is written on the letterhead of one Chartered Accountant known as Padamshi Lalka Shah. The said letter written by the Chartered Accountant is produced at Mark 3/1 and same being in vernacular is reproduced in vernacular:

The free English translation thereof is as under:

"Consent letter for appointment of Mediator/

Arbitrator (the crux of dispute is of the word "Madhyasthi-Mediator")"

Meghji Murarji and Pravinchandra Murarji who were partners in Gandhidham Commercial Corporation upto 31.3.83 on account of dispute/difference about accounts between us, in order to solve such dispute/difference we appoint Padamshi Lalka Shah as Madhyasthi and whatever decisions Padamshi Lalka Shah give as 'Madhyasthi' shall be binding on us and against such decision we shall not raise any objection".

3. It appears that the decision of Padamshi Lalka Shah which was produced at Mark 11/1, dated 13.10.83 is the matter of present controversy between the parties. Against said decision/award, dated 13.10.83 suit was filed in the court on 15.12.83 and in such proceedings affidavits were filed by either side.

4. The crux of point which this court is called upon to decide is as to whether the aforesaid mark 3/1 would constitute an appointment of an arbitrator or madhyasthi/mediator.

5. Mr.S.B.Vakil, Ld.counsel appearing for the petitioner-plaintiff contends and very seriously urges before this Court that the 2nd Jt.Civil Judge (SD), Kutch at Bhuj grossly erred in not passing the decree as per the award declared by the arbitrator under the provisions of sections 14 & 17 of the Arbitration Act. In his submission, Clause 19 of the Partnership deed which provided for reference of all disputes which shall arise between the parties or between any of them whether during or after the determination of partnership and as regards interpretation of the said deed or to any act of commission of either party to the dispute or either of them or in relation to any other matter, whatsoever, touching the the partnership affairs shall be referred to arbitration of the arbitrator to be governed under the Indian Arbitration Act, 1940. The said clause was very clear and the same is not replaced by the subsequent appointment of Padamshi Lalka as per writing dated 28th June, 1983.. According to him in fact Padamshi Lalka was appointed as arbitrator and after inspecting the documents of the parties declared award on 13.10.83.. The said award was " a decision of an arbitrator" as per which the defendant--Meghji Murji Shah was to pay Rs.45,000/- to the plaintiff and he also awarded interest at the rate of 12% p.a. on the above amount from 1.11.1983 till the entire amount was realised. He

further submitted that since the defendant failed to pay the amount Special C.S.No.876/83 was required to be filed in the court of 2nd Jt.Civil Judge (SD), Kutch at Bhuj under the provisions of Sections 14 & 17 of the Arbitration Act for passing decree as per the award declared by the Arbitrator. Unfortunately, the 2nd Jt.Civil Judge (SD), Kutch at Bhuj did not properly construe the arbitration agreement and he erred in relying upon the subsequent writing produced at mark 3/1 whereby Padamshi Lalka was stated to have been appointed as mediator (Madhyasthi). In his submission, he was simply appointed as arbitrator in terms of partnership deed and subsequent writing on the letterhead of said Padamshi Lalka did not amount to appointing him as madhyathi or mediator.

6. On the other hand, Mr.Y.S.Mankad, Ld.counsel appearing for the defendant--Meghji Murji Shah, who expired during pendency of proceedings and whose son is impleaded as party submitted before the Court that the judgment and order of the 2nd Jt.Civil Judge (SD) Kutch at Bhuj was just, legal and valid and that by subsequent letter written on the letterhead of Padamshi Lalka , Chartered Accountant, dated 23rd June, 1983 and produced at mark 3/1 clearly replaced and substituted earlier clause of appointment of arbitrator contained in the partnership deed. By the writing produced at mark 3/1 it is clearly established that in view of the dispute as regards accounts between the parties Padamshi Lalka Shah, Chartered Accountant, has stated that for resolving said dispute he was appointed as " mediator" and it was agreed that whatever decision he shall render shall be binding on the parties and that no objection shall be taken against such a decision.

7. Section 2 of the Arbitration Act, 1940 is the definition clause and defines "arbitration agreement" by section 2(a) as a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. The word "reference" is defined by section 2(e) to mean a reference to arbitration. In order that there must exist a valid arbitration agreement, the essentials are:

(i) There must be a valid and binding agreement, the parties must be ad idem.

(ii) There must be the intention of the parties to refer the dispute to arbitration and to be bound by the decision of arbitrator.

- (iii) The agreement must be in respect in respect of present or future disputes, and
- (iv) the agreement must be in writing

8. The person asked to act as an arbitrator in the settlement of dispute and to record settlement agreed on by the parties, his act is not that of an arbitrator and the record made by him is not an award, and if that record is operating itself it was only a contract between those who signed it (see *NBeale vs Richardson* 38 All England Report 573). There is a definite distinction between "arbitrator" and "mediator". An arbitrator is a person to whom differences and disputes are submitted by the parties. His functions are quasi judicial in nature. A "mediator" on the other hand is one requested to mediate or intervene between the parties, as a friend, to bring about a settlement. His act is not that of an arbitrator. The settlement brought about by him is not an award within the meaning of "Arbitration Act".

9. Mr.S.B.Vakil very strongly relied upon the writing contained on the letterhead of Padamshi Lalka Shah, which is produced at Mark 3/1. Said writing is captioned as "consent letter for appointing mediator". Secondly the writing is contained on the letterhead of Padamshi Lalka Shah, who was practising as Chartered Accountant. Thirdly, it is clearly mentioned that the dispute about difference of account has arisen, for settlement of such differences the parties were appointing Padamshi Lalka Shah as madhyasthi (mediator). Fourthly, the writing was written by Padamshi Lalka Shah, Chartered Accountant, himself. The said letter was described as consent letter appointing Padamshi Lalka Shah, Chartered Accountant as Madhyasthi (mediator). It is the submission of Mr.Mankad that the parties have deliberately given clause contained in the partnership deed being clause 19 agreeing in writing on the letterhead of Padamshi Lalka Shah by appointing him as madhyasthi (mediator) but not as an arbitrator.

10. Keeping the aforesaid submissions of the rival parties in mind, Shri S.B.Vakil has submitted that the words in the writing--Mark 3/1 "whatever decision he gives shall be binding on the party and that no objection shall be taken against such a decision" are decisive of the matter and for that purpose he has relied upon section 20 of the Indian Evidence Act. Since much reliance is placed upon provisions of said section 20 of

the Indian Evidence Act, same is reproduced herein:

"20. Admissions by persons expressly referred to  
by party to suit--

Statements made by persons to whom a party to the  
suit has expressly referred for information in  
reference to a matter in dispute are admissions".

11. It may be stated that the said section finds place in Chapter dealing with "admissions". Section 17 defines "Admission". Section 20 is captioned as "admissions by persons expressly referred to by party to suit". The provisions of Section 20 which are reproduced hereinabove, in my opinion, are not decisive of the matter. When statements made to persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute, such statements are admissions. In his submission, firstly in view of the statement contained in mark 3/1 or in the letter written on the letterhead of Padamshi Lalka Shah, it was not necessary that it must be a statement of both the parties, it can be even on reference by one party. Secondly, he submitted that the party must be a party to the suit. Thirdly, he submitted that the reference must be for information and not adjudication, and therefore, fourthly he concluded that the writing on mark 3/1 on the letterhead of Padamshi Lalka Shah was to obtain adjudication and not information regarding the matter in dispute. In fact, it would be a decision of Padamshi Lalka Shah. Fifthly, he submitted that though both the parties were not called at a time and they did not appear at a time before Chartered Accountant--Padamshi Lalka Shah and that they might have been heard on different occasions separately they were heard and they have participated in the proceedings and describing Padamshi Lalka Shah as a mediator or madhyasthi is immaterial. Sixthly, he submitted that on 13.10.83 the said Chartered Accountant Padamshi Lalka Shah gave an award and posted the same to the parties, and therefore, on 11.11.83 suit was filed by the plaintiff under sections 14 & 17 of the Arbitration Act requiring the court to pass a decree in terms of the award of the Chartered Accountant. Lastly, he submitted that on 25.11.1983 the other side gave a cheque for Rs.33,000/to one Purshottam Jethanand --plaintiff. It may be noted that this part of the statement is not supported by any of the facts found on the record of the case and it is not possible for this court to go into the correctness or otherwise of such fact.

12. In this connection Mr.Vakil has relied upon the decision of Allahabad High Court in the case of MT.AKBARI BEGAM vs RAHMAT HUSAIN reported in AIR 1933 Allahabad 861. The three-judge bench of the Allahabad High Court took the view that --

"an agreement to abide by the statement of a particular witness is in substance a reference to arbitration. The essence of arbitration is that the arbitrator decides the case and his award is to the nature of a judgment which is later on incorporated into a decree of the court. The arbitrator can either proceed on the basis of his own knowledge or make enquiries and take evidence and then give his decision on such evidence. But, where parties agree to abide by the statement of a third person or a referee, the referee merely makes a statement according to his knowledge or belief and the court then decides the case and pronounces its judgment on the basis of such a statement and passes a decree thereon. The referee is not authorised to make enquiries and take evidence and then announces his decision on the basis of such evidence. He is called upon to make a statement according to his knowledge or belief. "

While referring to section 20 of the Act, the court took the view that--

"for the purposes of reference to a third party under section 20, it is not necessary that the reference should be on questions of fact within the knowledge of the referee".

13. The aforesaid decision of the Allahabad High Court, in my opinion, is not an authority for the purpose of deciding as to whether the writing in the present case at mark 3/1 written on the letterhead of the Chartered Accountant of the parties would replace the arbitration agreement and would amount to appointing mediator. In fact, section 20 of the Evidence Act is not incorporated for this purpose and it in substance deals with the admission of a party. His Lordship Sulaiman, Chief Justice, who spoke for the Full Bench rightly brought about distinction by referring to the purpose of section 20. His Lordship clearly opined that--

"an agreement to abide by the statement of a particular witness is in substance not a

reference to arbitration. The essence of arbitration is that the arbitrator decides the case and his award is in the nature of a judgment which is later on incorporated into a decree of the court. The arbitrator can either proceed on the basis of his own knowledge or make enquiries and take evidence and then give his decision on such evidence. But whether parties agree to abide by the statement of a third person or a referee, the referee merely makes a statement according to his knowledge or belief and the court then decides the case and pronounces its judgment on the basis of such a statement and passes a decree thereon. The referee is not authorised to make enquiries and take evidence, and then announce his decision on the basis of such evidence. He is simply called upon to make a statement according to his knowledge or belief. In the case of an arbitration, as the arbitrator's award is an expression of an opinion and his procedure resembles that of a court, a party is entitled to file objection and challenge the validity of the award. The making of statement by a referee or a third person has no resemblance to proceeding conducted by him as if he were a court of law and accordingly there can be no procedure of filing objection as to its validity.

However, under section 20 of the Indian Evidence Act the statements made by the persons whom a party to the suit has expressly referred for information in reference to matter in dispute are deemed to be admissions of the party himself. The court further observed that--

"there is considerable difficulty in basing the binding character of the agreement only on the hypothesis that they are mere admissions under section 20 of the Evidence Act. Such admissions primarily are unilateral. Under section 31 of the Indian Evidence Act they are not conclusive. It would therefore follow that if there were other evidence on record it may be open to the parties to argue and it may be quite proper for the court to accept such other evidence and give a go by to the admission. Further more, in such an event, inspite of an agreement by the parties that the statement of the third person should be accepted as final and that there should be no



appeal from it, parties may yet appeal and urge that the case should be decided on the basis of other evidence on the record which outweighs the inconclusive admission. Obviously, such a course of action can not be tolerated. If any party be allowed to go behind the admission on the ground that it is not conclusive the whole object of the agreement would be frustrated. It is therefore unsafe to rest the finality of the agreement on the basis of a mere admission under section 20 of the Indian Evidence Act. Nor can one base solely on the ground of estoppel by admission".

It may be stated that the aforesaid judgment of the Full Bench of the Allahabad High Court was not followed by the subsequent bench of Allahabad High Court in the case of RAMJILAL vs RAM SANETHI LAL PANDEY reported in AIR 1978 Allahabad 351. In the said case a third person was expressly empowered by the parties to make his own enquiry in the dispute and then make his statement. The single Judge of the Allahabad High Court took the view that the section 20 of the Evidence Act was not applicable. In the said case a joint application was moved on behalf of both the parties praying that one S be appointed as a referee under section 20 of the Evidence Act. Both the parties jointly stated in the said application that whatever would be stated by the said sole referee, either in person before the court or by a statement in writing to be submitted by him to the court would be treated as sole evidence of both the parties and both the parties would be bound by the same. It was further stated in the application that the said referee would be entitled to examine the papers on record or to make such other enquiries as he liked to make before making his statement in the court. The said referee, however, did not personally appear before the court but sent his statement in writing on the record of the trial court. It was stated by him that he sent for plaintiff and the defendant, heard them, examined the papers in their presence, entertained the evidence which the parties desired to lead and after taking into consideration the entirety of the aforesaid matter, he has submitted his report. In such fact situation, it was held that it was hard to describe it a case to which Section 20 of the Evidence Act could be said to be applicable. But, on a true construction of the application it had to be held that the said person was appointed the sole arbitrator by the parties. The so-called statement was really in the nature of award and he has followed the full procedure which an arbitrator is

expected to follow. It was not a case where the person has simply given his award without following the procedure which an arbitrator is expected to follow.

14. Mr.S.B.Vakil has also relied upon two decisions of this court, namely, case of VAIDYA HARISHANKAR LAXMIRAM RAJYAGURU vs PRATAPRAY HARISHANKAR RAJYAGURU reported in 1988(2)GLR 986 and NARANBHAI AMTHALAL PANCHAL vs RAMCHANDRA SOMNATH PANCHAL reported in 1995(1)GLR354 . In the case of Vaidya Harishankar Laxmiram Rajyaguru (supra) the learned single judge of this court took the view that once a party either before the award is made, acquiesces to arbitration proceedings going on or acquiesces in the award after it is made, can not challenge the binding nature of the award. In the case before the Ld.single judge admittedly it was a matter of reference of dispute to arbitrator under the provisions of the Arbitration Act. It was clearly stated therein that both the parties to the dispute agreed to the intervention of one Kantilal Dahyaram Jani and to abide by his decision. After calling both the parties together and giving them opportunity of stating whatever they wanted to state he has given his award. Even below the award the parties have signed and stated that the award is agreed to and binding to both the parties. In my opinion in the fact situation before the Ld.single judge the question which is agitated before this court never arose and this decision can not be said to be an authority on the question which this court is required to answer. Similarly, in the case of Naranbhai Amthalal Panchal (supra) Ld.single judge of this court came to conclusion that if the intention of the parties was to refer a dispute to arbitration which is clear from the writing there is an agreement of arbitration as defined under section 2(a) and for arbitration agreement no particular form is necessary. In the case before the Ld.single judge same contention as to whether the party who has acquiesced in the arbitration proceedings can be permitted to urge that there was no arbitration agreement. This case also therefore is not an authority for the question which is raised before this court.

15. Mr.Vakil also relied upon the decision of the Panjab High Court in the case of M/s RAMLAL JAGAN NATH vs PUNJAB STATE reported in AIR 1966 Punjab 486. In the said case the Full Bench was concerned with an arbitration agreement. There was a clear agreement in the printed Works Contract to the effect that in the matter of dispute the case shall be referred to certain authority whose decision shall be final. The court found that such a clause in the contract would amount to valid

arbitration agreement. They have also referred to the principle that there is nothing peculiar or extraordinary about arbitration agreement and the same rule of construction and interpretation apply to such agreement as applied to agreements in general. The court has to seek to give effect to the intention of the parties as evidenced by the agreement itself without being overtechnical in its interpretation. This decision, once again, in the opinion of this court, is not directly on the point as in the works contract there was already clause providing for reference of dispute to certain authority whose order shall be final. In the case before the Punjab High Court there was clear clause providing for reference of dispute to the arbitrator. It was not a case of appointment of a Chartered Accountant as Madhyasthi (mediator) even when there was an agreement to refer all disputes or differences to an arbitrator. This decision again also is not an authority on the point in question.

16. In the case of SADHURAM vs UDE RAM reported in AIR 1967 Punjab 179 the Division Bench of the Punjab High Court in a suit for partition of joint family properties and rendition of accounts including the partnership business the trial court itself appointed an arbitrator as per the recital of partnership deed. Subsequently, the parties agreed to make a reference to a referee by consent to settle the dispute and to give decision. It was in such a fact situation that the court held that the referee should be deemed to be an arbitrator and his decision is an award and that it was not a reference under section 20 of the Act. In para 9 of said decision His Lordship D. FALSHAW, C.J in terms held as under:

"It is clear that the so-called reference by the parties to Mr. Laxmi Chand as referee was not based on any provision of the Civil Procedure Code which in fact does not contain any such provisions and generally references are regarded as being made under section 20 of the Evidence Act which reads--

"Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admission".

The section itself is thus brief and there is only one illustration which reads--

"the question is whether a horse sold by A to B is sound.

A says to B --"Go and ask C. C knows all about it". C's statement is an admission.

It is hard to mreads into this section any more than that if a party to a suit agrees to be bound by a statement of fact made by a third party the statement of that third party when made is to be treated as an admission by the party who made the offer, and if both parties agree to refer a matter to a third party his statement will be binding on both of them, but I can not regard the word 'information' as meaning anything but a statement of fact, and not a decision of any kind"

In the present case, however, it would seem from the statement recorded on behalf of all the parties that they were referring all their disputes to Mr.Laxmi Chand for decision and this is borne out by the terms of the socalled statement furnished to the court by Mr.Laxmi Chand inspite of the fact that instead of saying that his" decision on certain points is so and soi, he uses the words that his "statement" is that such and such property is given to such and such party, and in the absence of any authority, I should have no hesitation in holding that the reference did not fall within the scope of section 20 of the Evidence Act, and that it was to all intents and purposes a reference to Mr.LAXMI CHAND to decide the disputes between the parties".

The division bench of the Punjab High Court also referred to the decision of the Full bench of Suleman C.J, and Mukherji and King JJ reported in AIR 1938 Allhabad 861(supra). His Lordship the Chief Justice Suleman held that

the agreement to abide by the statement of a particular witness is in substance a reference to arbitration. The essence of arbitration is that the arbitrator decides the case and his award is in the nature of a judgment which is later on incorporated into a decree of the court. The

arbitrator can either proceed on the basis of his own knowledge or make enquiries and take evidence and then given his decision on such evidence. But where parties agree to abide by the statement of a third person or a referee the referee merely makes a statement according to his knowledge or belief and the court then decides the case and pronounces its judgment on the basis of such a statement and passes a decree thereon. The referee is not authorised to make enquiries and take evidence, and then announce his decision on the basis of such evidence. He is called upon to make a statement according to his knowledge or belief. In the case of an arbitrator as the arbitrator's award is an expression of an opinion and his procedure resembles that of a court, a party is entitled to file objections and challenge the validity of the award. The making of a statement by a referee or a third person has no resemblance to a proceeding conducted by him as if he were a court of law, and accordingly there can be no procedure for filing objections as to its validity. It is for the court in pronouncing judgment to consider its effect. But under section 20 of the Evidence Act statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are deemed to be admissions of the party himself. If the parties have agreed to abide by the statement of a third person be made in court he may well be a person to whom the parties have expressly referred for information in reference to the matter in dispute".

17. In my opinion, the aforesaid authorities which are cited by Mr.Vakil appearing for the petitioner are not in any way helpful in deciding the question or in holding that the document mark 3/1 written on the letterhead of the C.A.Padamshi Lalka Shah amounted to appointing said Padamshi Lalka Shah as arbitrator.

18. On the other hand, Mr.Y.S.Mankad, Ld.advocate for respondents has very vehemently submitted before this court that in the partnership deed itself there is an arbitration clause which provides for reference of dispute and/or differences to arbitrators. The letter at mark 3/1 does not describe Padamshi Lalka Shah as arbitrator nor does it refer to a reference of dispute to

arbitration, but on his own letter head he appoints himself as mediator(madhyasthi). Therefore the decision and/or statement made by Padamshi Lalka Shah can not be described as an award. In order to support his contention he relies upon the decision of Kerala High Court in the case of P.NARAYANAN NAIR vs E.ACHUTHAN NAIR reported AIR 1974 Kerala 51. In my opinion the aforesaid judgment does not directly deal with the question of as to whether there is an arbitration agreement or agreement appointing a person as mediator. However, in para 13 of the judgment the Division bench of the Kerala High Court observed as under;

"Even apart from the answer which we have accepted in the previous paragraph we do not think that the suit is one to enforce an award. The process of arbitration is the determination of a preexisting dispute. Every agreement entered into for the purpose of avoiding a dispute can not be said to be an arbitration agreement. If parties are at variance on any issue, the issue has necessarily to be settled as between them. The process of reference to an arbitration could be agreed upon by the parties and in such cases the arbitrator's award will be binding upon the parties to such agreement. But if it be that both the parties agree that certain services will be rendered by mediators to settle matters which are not yet in dispute between them, but such settlement is desirable to avoid disputes in future, even though the persons who are appointed as mediators are styled as arbitrators they will not become arbitrators within the meaning of the Act".

19. From the aforesaid observations of the Division Bench of the Kerala High Court it can be said that there was reference. In the present case to Padamshi Lalka Shah who was a Chartered Accountant and was appointed as a "mediator"(madhyasthi) and whatever statement he made or decision he gives can not be said to be one which is an award of an arbitrator.

20. It may be noted that Padamshi Lalka Shah , Chartered Accountant has rendered his decision on 13.10.83 as if on the dissolution of the partnership firm a dispute arose between the parties and he obtained statements of accounts interse and the parties have agreed to refer such dispute and all other disputes to

him as Chartered Accountant. He has divided the dispute and has heard both parties in detail though it is not clear as to whether he heard them in presence of each other or separately and has examined the documents and has rendered his decision thereby requiring Meghji Murji Shah to pay amount of Rs.45,000/to the party of the second part, i.e. Pravinchandra Murarji Savla. Now it may be noted that clause 16 of the partnership deed was absolutely clear on the point and the said clause contains an arbitration agreement. As against such clause subsequent writing at mark 3/1, dated 23rd June, 1983 is executed wherein the Chartered Accountant is appointed as mediator. In that view of the matter, in my opinion, the 2nd Jt.Civil Judge (SD) Kutch-Bhuj was right in dismissing the suit of Pravinchandra M.Savla being Spl.C.S.No.87/83 which was filed under sections 14 & 17 of the Arbitration Act calling upon the court to pass decree in terms of award declared by the arbitrator. If clause 16 of the partnership deed clearly provided for appointment of arbitrators there was no need of subsequent writing at mark 3/1 and Mr.Mankad is right in submitting that Padamshi Lalka Shah was not appointed as arbitrator, but he was merely a mediator and that the suit therefore for the purpose of getting decree in terms of award was not maintainable.

21. In that view of the matter present CRA filed by the original plaintiff is dismissed. No order as to costs. Rule is discharged.

...